**Before the**
**Federal Communications Commission**
**Washington, D.C. 20554**

| | | |
|---|---|---|
| In the Matter of | ) | |
| | ) | |
| Promoting Telehealth | ) | WC Docket No. 17-310 |
| In Rural America | ) | |

**COMMENTS OF**
**TELEQUALITY COMMUNICATIONS, LLC**

TeleQuality Communications, LLC (TeleQuality) respectfully submits these comments in response to the Wireline Competition Bureau's Public Notice seeking additional comments on urban and rural rates in the Rural Health Care (RHC) Program.[1] TeleQuality is a telecommunications company operating in 26 states and has been actively supporting the healthcare industry for more than a decade. TeleQuality currently serves more than 800 healthcare provider (HCP) locations, nearly all of which participate in the RHC Program.

TeleQuality appreciates the Commission's clear commitment to improving the RHC Program. In response to the Bureau's Public Notice, and as it noted in its initial comments, TeleQuality believes that the best way forward is for the Commission to take a market-based approach as an alternative to establishing a more complicated regulatory regime for the Telecom Program.[2] Promoting competition in the rural healthcare market is the most effective way to address potential rate manipulation. When there is competition in rural markets, the rates will

[1] *The Wireline Competition Bureau Seeks Additional Comment on Determining Urban and Rural Rates in the Rural Health Care Program*, WC Docket No. 17-310, Public Notice, DA 18-1226 (rel. Dec. 4, 2018) (*Public Notice*).

[2] Comments of TeleQuality Communications, LLC, WC Docket No. 17-310, February 2, 2018 at 2 (TeleQuality February 2018 Comments).

regulate themselves. To achieve this outcome, the Commission should encourage transparency, responsiveness, and accountability in the program's competitive bidding rules.[3]

**Compliance with the Commission's proposed rules will be impossible.** The Commission's proposals detailing how program participants should determine rural and urban rates would not increase transparency or predictability, and likely would not promote fiscal responsibility.[4] There are so many variables in the Commission's proposed rule that any rural rate would be subject to second-guessing:

- Did the service provider find *all* of the publicly available rates?
- How would the service provider even know if it *had* found all of the publicly available rates?
- How would the HCP know if its service provider had found all of the publicly available rates?
- How would USAC or the Commission know if it had all of the publicly available rates?
- How can a service provider be expected to finalize a bid when publicly available rates may change any time? If a carrier changed its publicly available rates after a service provider submitted a bid, would the service provider have to change the rate it bid or charged?
- What is a publicly available rate? Most carriers are not required to file tariffs. Would the rural rate be set using only a rate that is required to be filed with a state commission?
- How would the service provider ensure that the rate is comparable to the service it is providing? Tariffs often include multiple types of products even at a specific bandwidth.
- What if an HCP wants to purchase a bandwidth that is not listed in a "publicly available" document?
- If the service provider has to use the rates of another carrier in a "comparable rural area" because the only rates available are the bidding carrier, what constitutes a comparable area? What is a functionally similar service?

---

[3] *Id.*

[4] *Public Notice* at 2; Promoting Telehealth in Rural America, WC Docket No. 17-310, Notice of Proposed Rulemaking and Order, 32 FCC Rcd 10631 at ¶¶ 61-72 (2017) (*Notice*).

The rule the Commission has proposed for the rural rate would require service providers to figure out what every other carrier is charging for a specific service and in a specific area. In practice, the logistical complexities for each circuit would make determining the rural rate impossible—for reviewers, applicants and service providers. The Commission's proposed approach gives rise to all of these questions and complexities because, at its core, it is fundamentally inconsistent with how the Commission regulates the underlying services themselves, irrespective of whether the underlying services are used to provide service to HCPs.[5]

TeleQuality agrees with the Commission that the current rules are untenable. But the Commission's proposed rules will not increase predictability or transparency for HCPs. What will HCPs do if they receive multiple bids, but the rates are different? How will an HCP know which rate is the correct one? What if it selects the "wrong" rural rate? TeleQuality anticipates as many challenges with the proposed rules as with the current rules.

Rates are dependent upon geography, topology and density, so averaging does not typically work for rural areas. Again, it is easy to anticipate the disputes that would arise and the lengthy processes necessary to resolve those disputes. Rather than improving the program, such rural rate regulation would make things far more difficult for applicants, which would undermine the statutory goals of the RHC Program.

Further, the proposed rural rate rule does not solve any of the problems the Commission identified with the current rules.[6] It does not ensure HCPs have more skin in the game.[7] It does

---

[5] *Business Data Services in an Internet Protocol Environment*, WC Docket No. 16-143, Report and Order, 32 FCC Rcd 3459 (2017) (*BDS Order*).

[6] *Notice* at ¶ 64.

[7] *Id.* at ¶ 29.

not ensure a more fair and open competitive process.[8] It does not ensure more transparency.[9] It is infinitely more complex than the current rule, under which service providers only have to know their own rates.[10]

The Commission should also be aware that tariffed rates often are not the rates actually being charged to commercial customers. Most services HCPs are purchasing, such as Ethernet, are not required to be tariffed, as the services are deregulated.[11] As mentioned in prior comments, if tariffed rates are used to calculate urban rates, instead of the urban rates actually charged in the marketplace, the Commission runs the risk of rural HCPs paying more than their urban counterparts—contrary to Congress's intent.[12] Alternatively, if tariffed rates are used to calculate rural rates, the Commission runs the risk of the program paying more than would be the case in a competitive marketplace, as HCPs would be forced to use a formula for the rural rate, instead of receiving the benefit of their market power to obtain a better rate.[13]

**Promoting competitive bidding is better than increasing rate regulation.** Instead of adopting subjective, time-consuming processes, TeleQuality reiterates its recommendation that

[8] *Id.* at ¶ 100.

[9] *Id.* at ¶ 60.

[10] 47 C.F.R. § 54.607.

[11] *BDS Order*, 32 FCC Rcd at 3462, ¶ 4.

[12] TeleQuality February 2018 Comments at 13-14. Presumably, USAC is obtaining safe harbor urban rates from tariffs, although it is unclear how USAC develops the rates it posts. *See* comments on transparency, *infra* pp. 6-7. USAC's safe harbor rate for a DS-3 (45 Mbps) in Virginia was $6,400 while a competitor in the urban market offers 50 Mbps for $399.60. In Arizona, the USAC safe harbor rate for a DS-3 was $8,572 while TeleQuality found a major competitive service provider offering 50 Mbps at a rate of $381. Similarly, in Oklahoma, USAC's safe harbor rate for a DS-3 was $4,000 while a competitive rate of $471.50 for a 50 Mbps circuit was identified.

[13] For example, in Mississippi, the BellSouth tariffed monthly rate for a 10 Mbps Ethernet connection is $2,360. TeleQuality is charging its customers $2,128. Similarly, in Georgia, the BellSouth rate is $2,360 while TeleQuality is charging $944.96 for one 10 Mbps circuit and $1,525.39 for another circuit.

the Commission instead use market-based mechanisms wherever possible to encourage HCPs to be price-sensitive, as further described below.[14] Empowering multiple methods of bandwidth delivery and other competition-attracting measures similar to those in the E-rate program should have dramatic effects on the cost of service per megabit, which should be the Commission's goal.[15] TeleQuality also believes that transparent and open competition will limit waste, fraud, and abuse in the program.[16]

As a reseller, TeleQuality is also concerned that the Commission's proposed approach of relying on publicly available rates would have the unintended consequence of limiting the types of services that HCPs can request to the specific services that are defined in existing tariffs. Intentionally or not, this approach will squelch competition and innovation, to the particular disadvantage of resellers, who differentiate their services from other carriers' services by taking one or multiple inputs and turning them into a service solving the unique problems of rural end users.

The Commission's real issue is that HCPs have no incentive to consider price when selecting a vendor because rural HCPs will pay the urban rate, regardless of which company the HCP selects and how much it is charging. One solution could be the adoption of a cost-effectiveness standard like that in the E-rate program.[17] If the selected bidder is charging more

---

[14] TeleQuality February 2018 Comments at 11; *see also* Comments of the United States Telecom Association, WC Docket No. 17-310, February 2, 2018 at 7-8 (cautioning that undue price regulation my disrupt competition) (USTelecom Comments).

[15] TeleQuality February 2018 Comments at 11.

[16] TeleQuality February 2018 Comments at 11; Comments of the Schools, Health & Libraries Broadband (SHLB) Coalition, WC Docket No. 17-310, February 2, 2018, at 20.

[17] *Request for Review of the Decision of the Universal Service Administrator by Ysleta Independent School District*, Order, FCC 03-313, 18 FCC Rcd 26407, ¶ 54 (2003) (*Ysleta Order*) (noting that proposal

than double the other bidders, the burden would fall upon the HCP to explain why the more expensive bidder was selected.

**Transparency would improve the procurement process.** As TeleQuality noted in its earlier comments, increased transparency in the RHC Program will result in better pricing offered to HCPs.[18] In the E-rate program, the Commission and USAC have focused on increasing transparency. Schools and libraries' applications are posted online and are easily searchable.[19] Schools and libraries have to identify the bandwidths purchased and their recipients of services publicly so potential vendors can determine the current rates being charged.[20] In contrast, the RHC Program does not make applications publicly available. USAC encourages HCPs to be as vague as possible on their requests for services, so that HCPs can have flexibility when selecting a provider.[21] In fact, as the Commission noted in the Notice of Proposed Rulemaking, the requirement that Telecom Program competitive bidding processes be fair and open is not yet codified.[22] TeleQuality recommends that USAC make the RHC Program applications and competitive bids available to the public, as the increased information and transparency would further promote a fair and open competitive bidding process.[23]

to sell routers at prices two or three times greater than the prices available from commercial vendors would not be cost-effective absent extenuating circumstances).

[18] TeleQuality February 2018 Comments at 2, 12; USTelecom Comments at 15-16.

[19] TeleQuality February 2018 Comments at 12.

[20] *Id.*; USTelecom Comments at 15-16.

[21] USAC Website: Competitive Bidding, Describe Your Needs. https://www.usac.org/rhc/telecommunications/health-care-providers/competitive-bidding.aspx.

[22] *See Notice* at ¶¶ 100, 103.

[23] TeleQuality February 2018 Comments at 12; Reply Comments of TeleQuality Communications, LLC, WC Docket No. 17-310, March 5, 2018 at 7 (TeleQuality March 2018 Reply Comments); USTelecom Comments at 15-16).

Further, program participants do not even know how USAC has established the safe harbor urban rates. All they can see is that the safe harbor rates increased for FY 2018, but there is no information regarding how USAC arrived at the rates posted. Some of the rates were significantly above the rates being charged in urban markets for a similar service. Urban rate research is difficult for HCPs, so they rely upon service providers for this information. It is difficult for service providers as well. However, TeleQuality has identified examples in the retail marketplace that offer competitive urban rates while USAC's safe harbor rates seem to be significantly above market rates in some cases. For example, USAC's safe harbor rate for a DS-3 (45 Mbps) in Virginia was $6,400 while a carrier in the urban market offers 50 Mbps for $399.60. In Arizona, the USAC safe harbor rate for a DS-3 was $8,572 while TeleQuality found a major competitive service provider offering 50 Mbps at a rate of $381. Similarly, in Oklahoma, USAC's safe harbor rate for a DS-3 was $4,000 while a competitive rate of $471.50 for a 50 Mbps circuit was identified.

TeleQuality has suggested to USAC and the Commission that they should obtain accurate, current urban rates, which would then be publicly posted for all program participants to use. At a minimum, TeleQuality has suggested that the program could use urban rates provided by HCPs that USAC has verified to set the safe harbor rates for each state. If there is a verifiable urban rate in a particular state, that rate should be available to all HCPs in the state, not just the one HCP which originally submitted the rate. Ideally, the Commission would establish the urban rates via a rulemaking process each year, utilizing the rates it was provided by HCPs in the prior year.[24] This would be similar to the E-rate program's Eligible Services List, which is released for comment each year before being finalized by the Commission. This would ensure that rural

[24] TeleQuality February 2018 Comments at 15-16.

HCPs are paying rates comparable to those paid by urban HCPs, and also ensure all rural HCPs in a given state have access to the best, most accurate urban rates.

**Increasing discounts for rural entities may encourage HCPs to move to the HCF program.** As an alternative, the Commission could consider increasing the discounts available to rural HCPs in the Healthcare Connect Fund portion of the program. If HCPs could receive up to 90 percent discounts in the HCF program—just like rural schools do in the E-rate program—the Commission would ensure that HCPs are more price-sensitive, without the uncertainty each year of knowing whether the Commission or USAC believes that either the urban rate or the rural rate was appropriately calculated.

Some parties may argue that a course which encourages applicants to use the HCF program instead of modernizing the statutorily-mandated Telecom Program ignores the directive of Congress to subsidize the difference between the urban and rural rates. This is a legitimate concern, as the RHC Program was originally designed to bridge the digital divide and support connectivity in rural markets at urban prices. Increasing HCF discounts could make that program more attractive for applicants, but it could also be a slippery slope for the program. Overall, per-megabit prices across the country have been dropping, and that trend is expected to continue in rural areas, as well as urban areas.

Rural network infrastructure is reaching the tipping point toward delivering high-quality, low-cost options for telecommunications service. As TeleQuality has spent more than a decade working with HCPs throughout the United States, we see greater broadband deployment in more under/unserved areas than ever before, and the velocity of the delivery timetable of these services is remarkable. Increased availability is resulting in cost reductions for service providers and end users. The real question is how to handle the significant impact of high-cost outliers.

Without meaningful modernization, the Telecom Program will cease to accomplish what Congress intended because the program's complexity will outweigh its utility for those it is supposed to benefit. In that situation, the HCF program would need significant improvements to fill the void and ensure rural HCPs can obtain necessary services to deliver the best health care they can to the communities they serve.

In conclusion, TeleQuality strongly supports the goals of the RHC Program and believes that the recommendations discussed herein would make the Program even more successful. TeleQuality appreciates the opportunity to comment on this matter and is available to answer any questions the Commission may have.

Respectfully submitted,

Tim Koxlien
Chief Executive Officer
TeleQuality Communications, LLC
Tim@telequality.com
(210) 408-0388

Gina Spade
Broadband Legal Strategies
1629 K Street, NW Suite 300
Washington, DC 20006
gina@broadbandlegal.com
(202) 907-6252

*Counsel for TeleQuality Communications, LLC*

January 30, 2019